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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,083	03/26/2004	Laura Bridge	160-071	8218
34845	7590	12/06/2007		EXAMINER
McGUINNESS & MANARAS LLP				AJAYI, JOEL
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ACTON, MA 01720				
			ART UNIT	PAPER NUMBER
			2617	
				MAIL DATE
				DELIVERY MODE
			12/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/810,083	BRIDGE ET AL.
	Examiner	Art Unit
	Joel Ajayi	2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 August 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2 and 6-17 is/are rejected.  
 7) Claim(s) 3, 4, and 5 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

In view of the appeal brief filed on 8/16/07, PROSECUTION IS HEREBY REOPENED.

A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

*Appeal*

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 2, and 6-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Eran et al.** (U.S. Patent Application Number: 2004/0063455) in view of **Barber et al. (U.S. Patent Application Number: 2004/0076134)**.

Consider **claim 1**; Eran discloses that the method comprises of a plurality of access points coupled to a plurality of stations (paragraph 37, lines 15-19), and it comprises the steps of: converting a selected access point into a probe device (paragraph 49, lines 1-6); performing probe operations by the probe device (paragraph 20); and forwarding information retrieved from the probe operations to a management device (paragraph 8, lines 10-14).

Eran fails to disclose a method for monitoring a wireless network.

In the same field of endeavor Barber discloses a method for monitoring a wireless network (paragraph 72, lines 3-6).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Barber into the method of Eran in order to provide greater control over wireless networks.

Consider **claim 2**; Eran discloses the step of converting the selected access point includes the step of forwarding a Probe command to the selected access point (paragraph 49, lines 1-6).

Consider **claim 6**; Barber discloses that the selected access point is selected in response to its proximity to an unauthorized access point (neighboring wireless network) (paragraph 72, lines 3-6; paragraph 77).

Consider **claim 7**; Eran discloses that the selected access point is automatically selected in response to the detection of a network problem (paragraph 8, lines 10-23).

Consider **claim 8**; Eran discloses that the selected access point is automatically selected in response to a periodic scan of each of the plurality of access points in the network (paragraph 58, lines 1-4).

Consider **claim 9**; Eran discloses the step of converting the probe device into an access point after forwarding information to the management device (paragraph 8, lines 10-14; paragraph 49, lines 1-6).

Consider **claim 10**; Barber discloses that the selected access point includes a plurality of radio frequency channels, and wherein the selected access point continues to serve as an access point for a first subset of the plurality of channels and serve as a probe device for a second subset

of the plurality of channels (the access point can perform this function simultaneously) (paragraph 72, lines 3-6).

**Claims 11-14, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Eran et al. (U.S. Patent Application Number: 2004/0063455)** in view of **Kinnunen et al. (U.S. Patent Number: 6,856,802)**.

Consider **claim 11**; Eran discloses a device comprising: means for operating as an access device to permit a plurality of wirelessly coupled devices (paragraph 37, lines 15-19) to communicate with a wired network (paragraph 7, lines 11-14), the access device and the plurality of wirelessly coupled devices forming a wireless network (paragraph 8, lines 10-16); and means for selectively operating as either the access device or the probe device in response to receipt of a command at the device (paragraph 49, lines 1-6).

Eran fails to disclose a means for operating as a probe device for scanning the plurality of wirelessly coupled devices to obtain operating statistics for the wireless network.

In the same field of endeavor Kinnunen discloses a means for operating as a probe device for scanning the plurality of wirelessly coupled devices to obtain operating statistics for the wireless network (column 5, lines 35-44).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Kinnunen into the method of Eran in order to measure and optimize the quality of data transmission in a digital cellular radio system.

Consider **claim 12**; Eran discloses that the command is a Probe command forwarded by a network manager to the device (paragraph 49, lines 1-6).

Consider **claim 13**; Eran discloses that the command is a Probe command received a command line interface on the device (paragraph 44, lines 1-8).

Consider **claim 14**; Eran discloses that the Probe command is automatically generated by the device in response to an event (the identification of the access points can be in the form of a test; the access point automatically measures the signal, a form of testing , before sending the request to the manager) (paragraph 47, lines 1-6).

Consider **claim 16**; Eran discloses that the event is the detection of network performance degradation in the wireless network (paragraph 8, lines 10-23).

**Claims 15 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Eran et al. (U.S. Patent Application Number: 2004/0063455)** in view of **Kinnunen et al. (U.S. Patent Number: 6,856,802)**, and further in view of **Barber et al. (U.S. Patent Application Number: 2004/0076134)**.

Consider **claim 15**; Eran and Kinnunen fail to disclose that the event is the detection of an unauthorized access point in the network.

In the same field of endeavor Barber discloses that the event is the detection of an unauthorized access point in the network (neighboring wireless network) (paragraph 72, lines 3-6; paragraph 77).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Barber into the method of Eran and Kinnunen in order to provide greater control over wireless networks.

Consider **claim 17**; Eran and Kinnunen fail to disclose that the means for operating as an access point operates over a range or channels, and wherein the means for operating as a probe device operates over the range of channels, and wherein the device operates as an access device over a first subset of the range of channels and operates as a probe device over a second subset of the range of channels.

In the same field of endeavor Barber discloses that the means for operating as an access point operates over a range or channels, and wherein the means for operating as a probe device operates over the range of channels, and wherein the device operates as an access device over a first subset of the range of channels and operates as a probe device over a second subset of the range of channels (the access point can perform this function simultaneously) (paragraph 72, lines 3-6).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Barber into the method of Eran and Kinnunen in order to provide greater control over wireless networks.

*Allowable Subject Matter*

Claims 3, 4, and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses should be brought to**

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joel Ajayi whose telephone number is (571) 270-1091. The Examiner can normally be reached on Monday-Friday from 7:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

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Art Unit: 2617

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*Joel Ajayi*



CHARLES N. APPIAH  
SUPERVISORY PATENT EXAMINER